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Via Certified Mailing – Return Receipt

August 15, 2019

Kevin Harvey / Owner
Jeff Brinkman / Winemaker
Managing Agent
Rhys Vineyards LLC
11715 Skyline Blvd.
Los Gatos, CA 95033-9588

AUG 20 2019

Re: Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act (Clean Water Act)

Dear Mr. Harvey, Mr. Brinkman, and Managing Agent:

NOTICE OF ALLEGED VIOLATIONS

This Notice is provided on behalf of California River Watch (“River Watch”) in regard to violations of the CWA, 33 U.S.C. § 1251 *et seq.*, that River Watch believes are occurring at the winery owned and operated as Rhys Vineyards (“Winery”) located at 11715 Skyline Boulevard in Los Gatos, California. Notice is being sent to you as the responsible owners, operators, and managers of the Winery and real property. This Notice addresses the violations of the CWA, including violation of the new terms of the General California Industrial Storm Water Permit, and the unlawful discharge of pollutants from the Winery indirectly into Stevens Creek, a navigable water of the United States impaired under CWA § 303(d) for diazinon, temperature, toxicity, and trash.

CWA § 301(a), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States unless such discharge is in compliance with various enumerated sections of the Act. Among other things, CWA § 301(a) prohibits discharges not authorized by, or in violation of, the terms of an individual National Pollutant Discharge Elimination System (“NPDES”) permit or a general NPDES permit issued pursuant to CWA § 402(p), 33 U.S.C. § 1342(p). CWA § 402(p), 33 U.S.C. § 1342(p) establishes a framework for regulating storm water discharges under the NPDES program. States with approved NPDES permitting programs are authorized under this section to regulate storm water discharges through permits issued to dischargers and/or through the issuance of a single, statewide general permit applicable to all storm water dischargers. Pursuant to CWA § 402, the Administrator of the U.S. Environmental Protection Agency (“EPA”) has authorized California’s State Water Resources Control Board (“SWRCB”) to issue NPDES permits including general NPDES permits in California.

The SWRCB elected to issue a statewide general permit for industrial dischargers and issued NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ (the "General Permit") on or about November 19, 1991, modified it on or about September 17, 1992, reissued it on or about April 17, 1997, and amended it significantly on April 1, 2014 (effective July 1, 2015), pursuant to CWA § 402(p). In order to discharge stormwater lawfully in California, industrial dischargers must comply with the terms of the General Permit or have obtained an individual NPDES permit and be in compliance with its terms.

CWA § 505(b) requires a citizen to give notice of the intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act. Notice must be given to the alleged violator, the EPA, and the state in which the violations occur. As required by the CWA, this Notice provides notice of the violations that River Watch contends have occurred and continue to occur at the Winery. Consequently, Kevin Harvey and Rhys Vineyards, LLC ("Rhys") is placed on formal notice by River Watch that after the expiration of sixty (60) days from the date of this Notice, River Watch will be entitled to bring suit in the United States District Court against Rhys for continuing violations of an effluent standard or limitation, NPDES permit condition or requirement, or Federal or State Order issued under the CWA (in particular, but not limited to, CWA § 301(a), § 402(p), and § 505(a)(1)), as well as the failure to comply with requirements set forth in the California Code of Federal Regulations and the San Francisco Bay Regional Water Quality Control Board ("RWQCB") Water Quality Control Plan or "Basin Plan."

The CWA requires that any notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto shall include sufficient information to permit the recipient to identify the following:

1. The Specific Standard, Limitation, or Order Alleged to Have Been Violated.

To comply with this requirement, River Watch notices Rhys of ongoing violations of the substantive and procedural requirements of CWA § 402(p) and violations of NPDES Permit No. CAS000001, SWRCB Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ and Order No. 2014-0057-DWQ (the General Permit) relating to services and operations taking place at the Winery.

Rhys, rather than seeking coverage under an individual NPDES permit, filed a Notice of Intent ("NOI") agreeing to comply with the terms and conditions of the General Permit. The SWRCB approved the NOI on or about August 7, 2017 and Rhys is assigned Waste Discharge Identification ("WDID") number 2 43I027290. River Watch, on the basis of eye-witness reports, records publicly available, and/or records in the possession and control of Rhys, contends that in the continuing operations taking place at the Winery, conducted both indoors and outdoors where they are subject to rain events, Rhys has failed to comply from Annual Reporting Year 2015-2016 to the present with the strict terms and conditions of the General Permit.

In addition to the alleged violations of the terms and conditions of the General Permit, River Watch alleges violations of the provisions of discharge prohibitions contained in the RWQCB's Basin Plan, which are incorporated by reference as part of the compliance obligations imposed on Rhys for the Winery under the General Permit (General Permit Section I.C.29).

2. The Activity Alleged to Constitute a Violation.

Full compliance with the mandates of the General Permit is not a mere statutory and regulatory exercise. Having agreed to its terms, Rhys has a continuing burden to demonstrate compliance with each and every applicable provision of the General Permit. River Watch alleges the following actions and inactions as violations of the General Permit:

a. Failure to Properly Sample and Monitor Stormwater Discharges

Under the new General Permit, Rhys is required to comply with all of the following:

- i. “Collect and analyze stormwater samples from two (2) Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)” (General Permit Section XI.B.2 and SWPPP Section 4.1.3 (“*Sampling Frequency*”).

River Watch, following review of the SWRCB’s SMARTs reporting database, alleges Rhys failed to comply with this requirement by failing to conduct any sampling for the Winery under Stormwater Pollution Prevention Plan (“SWPPP”) Section 4.0 (“*Monitoring Implementation Plan*”) during any of the Annual Reporting Years during which the Winery was in operation.¹

- ii. “Analyze all collected samples for the following parameters: “(a) Total suspended solids (TSS) and oil and grease (O&G); (b) pH ...; (c) Additional parameters identified by the Winery on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the pollutant source assessment ...” (General Permit Section XI.B.6.a.-c.).

River Watch, in the absence of the full complement of Annual Reports and “Analytical Reports” of the stormwater samples required to be reported by Rhys, cannot determine the extent of the stormwater pollution being discharged from the Winery. The Analytical Reports should provide sampling for Oil and Grease, Total Suspended Solids, and pH; the “List of Identified Pollutants within the Impaired Watershed”; zinc and copper resulting from transportation activities at the Winery; and critically the “additional parameters identified by the Winery on a facility-specific basis that serve as indicators of the presence of industrial pollutant identified in the pollutant source assessment ...” (General Permit Section XI.B.6.c; SWPPP Section 2.5 “*Potential*

¹ Note that the 2018-2019 Annual Report for the Winery states that Rhys “sample[d] the required number of Qualifying Storm Events during the reporting year for all discharge locations, in accordance with Section XI.B” (Annual Report “Question Information” #3). Further, while the 2018-2019 Annual Report states that “the Discharger reduced the frequency of sampling at the facility area in accordance with the Sample Frequency Reduction in Section XI.C.7” (2018-2019 Annual Report “Question Information #6), the requirements for compliance with this Section are not available for review on SMARTS. The General Permit’s allowance for a reduction in the frequency of sampling does not include the option of not conducting any sampling. Finally, the required Annual Report for the Winery is only available on SMARTS for Annual Reporting Year 2018-2019, in violation of General Permit Section XVI and as required by the SWPPP Section 1.8 (“*Annual Report*”).

Pollutant Sources”).

b. Failure to Comply with Receiving Water Limitations and Discharge Prohibitions

The General Permit requires Rhys to ensure that industrial stormwater discharges and authorized non-stormwater discharges (“NSWDs”) do not: (a) cause or contribute to an exceedance of any applicable water quality standards in Stevens Creek (General Permit Section I.E.37, VI.A.); (b) adversely affect human health or the environment (General Permit Section VI.B.); and, (c) do not contain pollutants in quantities that threaten to cause pollution or a public nuisance (General Permit Section III.C., VI.C.). Rhys provides no evidence of complete compliance with these requirements for its transportation related areas

c. Failure to Comply with Total Maximum Daily Load (TMDL) Requirements

As Stevens Creek is CWA § 303(d) listed as impaired, when Rhys applied for NOI coverage under the new General Permit, it was required to submit data and/or information, prepared by a Qualified Industrial Storm Water Practitioner (“QISP”), demonstrating that the Winery: (1) eliminated all exposure to stormwater of the pollutants for which the water body is impaired, has documented the procedures taken to prevent exposure onsite, and has retained such documentation with the SWPPP at the facility; (2) the pollutant for which the water body is impaired is not present at the Winery; or (3) the discharge of any listed pollutant will not cause or contribute to an exceedance of a water quality standard (General Permit Section VII.B.). River Watch could find no documentation demonstrating compliance by Rhys with these requirements.

d. Failure to Prepare and Implement an Adequate SWPPP

i. Assessment of Potential Pollutant Sources

The Winery’s SWPPP fails to include a sufficient narrative assessment of all areas of industrial activity with potential industrial pollutant sources: (i) likely to be present in industrial stormwater discharges and authorized NSWDs; (ii) the degree to which the pollutants associated with those materials may be exposed to, and mobilized by contact with, stormwater; and; (iii) the identification of the industrial pollutants related to the receiving waters with CWA § 303(d) listed impairments or approved TMDLs that may be causing or contributing to an exceedance of a water quality standard in the receiving waters (General Permit Section X.G.2.i, iv, and ix).

Although Rhys has identified certain facility-specific activities taking place at the Winery that are known to create pollution, it has failed to identify additional parameters associated with these facility-specific industrial pollutants. For example, Rhys identifies transportation activities but fails to test for copper or zinc, which are known pollutants from tires, brake pads, fuels and lubricants. Rhys has also failed to identify or test for these transportation- related pollutants in its parking lots, vehicle storage area(s), or other transportation surfaces.

ii. Site Map

The Site Map for the Winery is inadequate. The Facility Site Map included on SMARTS (Attachment ID# 1652411)) fails to provide the detailed list of information required by the General

Permit. Specifically, the Site Map does not include: (a) sufficient notes, legends, and other data as appropriate to ensure the map is clear, legible and understandable; (b) the actual site-facility boundary, stormwater drainage areas within the site-facility boundary, and portions of any drainage area impacted by discharges from surrounding areas; (c) the flow direction of each drainage area, on-facility surface water bodies, areas of soil erosion, and location of nearby water bodies (such as rivers, lakes, wetlands, etc.) or municipal storm drain inlets that may receive the facility's industrial stormwater discharges and authorized NSWDS; all the locations of stormwater collection and conveyance systems, associated discharge locations, and direction of flow; (d) the locations and descriptions of structural control measures such as catch basins, berms, detention ponds, secondary containment, oil/water separators, diversion barriers; and (e) the identification of all impervious areas of the facility including paved areas such as roads, parking lots, and vehicle storage areas (General Permit Section X.E.).

3. The Person or Persons Responsible for the Alleged Violation.

The entities responsible for the alleged violations are Kevin Harvey and Rhys Vineyards LLC.

4. The Location of the Alleged Violation.

The location of the various violations is the permanent address of the Winery at 11715 Skyline Boulevard in Los Gatos, California, including the waters of Stevens Creek – a water of the United States.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred.

The range of dates covered by this Notice is from July 1, 2015 to August 15, 2019. River Watch will from time to time update this Notice to include violations of the CWA which occur after the range of dates covered by this Notice. Some of the violations are continuous in nature, therefore each day constitutes a violation.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice.

The entity giving this Notice is California River Watch, an Internal Revenue Code § 501(c)(3) nonprofit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. River Watch's mailing address is 290 South Main Street, #817, Sebastopol, California 95472. River Watch is dedicated to protecting, enhancing and helping to restore surface water and groundwaters of California including coastal waters, rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and to educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: US@ncriverwatch.org, or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed to:

David Weinsoff, Esq.
Law Office of David Weinsoff
138 Ridgeway Avenue
Fairfax, CA 94930
Tel. 415-460-9760
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REMEDIAL MEASURES REQUESTED

River Watch believes that at a minimum implementing the requirements of the General Permit outlined in Section 2 of this Notice is necessary in order to bring Rhys into compliance with the CWA and reduce the biological impacts from its non-compliance upon public health and the environment.

CONCLUSION

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks or the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the alleged violations of the CWA as set forth in this Notice.

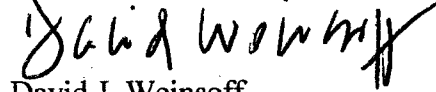
The General Permit, in the very first “Standard Condition,” states that “Dischargers shall comply with all standard conditions in this General Permit. Permit noncompliance constitutes a violation of the Clean Water Act and the [California] Water Code and is grounds for enforcement action and/or removal from General Permit coverage” (General Permit Section XXI.A). The gravity of ensuring that the Annual Reports submitted to the State of California are complete and accurate is highlighted by the General Permit requirement that the person signing and certifying the document certifies that “to the best of my knowledge and belief, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations” (General Permit Section XXI.L).

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for unpermitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), 33 U.S.C. § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$54,833.00 per day/per violation pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1-19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the “citizen suit” provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a **60-day** “notice period” to promote resolution of disputes. River Watch encourages Rhys to contact counsel for River Watch within **20 days** after receipt of this Notice regarding the allegations detailed in this Notice. In the absence of productive discussions to resolve this dispute, or receipt of information demonstrating that Rhys is in

compliance with the strict terms and conditions of the General Permit, River Watch will have cause to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,



David J. Weinsoff

DW:lm

Service List

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